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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/939,072	08/24/2001	Gregory M. Fehn	09798495-0030	4249

26263 7590 10/16/2003

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EXAMINER

NOLAN, SANDRA M

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 10/16/2003

7

Please find below and/or attached an Office communication concerning this application or proceeding.

AS7

Office Action Summary	Application N .	Applicant(s)	
	09/939,072	FEHN, GREGORY M.	
	Examin r	Art Unit	
	Sandra M. Nolan	1772	

-- The MAILING DATE of this c mmunication appears n the cover she t with the correspond nce address --

Peri d f r Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disp sition of Claims

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) 23-49 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,2 and 4-16 is/are allowed.
- 6) ☒ Claim(s) 3 and 7-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Pri rity under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims

1. Claims 1-49 are pending.

Election/Restrictions

2. This application contains claims 23-49 drawn to an invention nonelected without traverse in Paper No. 3 (the 25 March 2003 response).

A complete reply to any final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Rejections Withdrawn

3. The 35 USC 112 rejection of claim 3, as stated in section 6 of the 18 April 2003 office action (Paper No. 4) is withdrawn in order to apply the new rejections below.
4. The 35 USC 102 rejection of claims 1-3 and 10-22 as anticipated by Fehn (US-5,693,283), as described in section 8 of Paper No. 4, is withdrawn in view of applicant's arguments in the response dated 02 October 2003 (Paper No. 6).

New Rejections

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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What do "natural polypropylene", "reground bottle scrap" and "reground trim scrap" mean?

Please clarify the claim.

7. Claims 17-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear how the barrier layers of claims 17/20 and the adhesive/barrier/-adhesive combination of claim 18 can be between the first layer and the second layer if, as claim 1 states, "the second layer [is] formed on the first layer" (claim 1, line 5).

Please clarify the claims.

Allowable Subject Matter

8. Claims 1-2 and 4-16 are allowed. The sole base claim, claim 1, can be summarized as follows:

9. Claim 1 covers a container comprising a wall defining the interior and exterior of the container, which wall has at least one portion wherein an *innermost layer of polyethylene (PE) is formed on a polypropylene (PP) layer* and the PE layer is fluorinated. [Key features are italicized.]

10. The closest prior art is Fehn, which teaches PP and PE layers in a container (see claim 4 of the patent) and fluorinated PE in its interior (see col. 4, lines 1-14). However, it does not suggest containers having the features of claim 1 as summarized above.

11. In sum, the prior art of record fails to teach or suggest containers wherein an innermost layer of fluorinated PE is formed on a PP layer.

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Conclusion

Any inquiry concerning this communication should be directed to the Examiner, Sandra M. Nolan, whose telephone number is 703/308-9545. The Examiner can normally be reached on Monday through Thursday, from 6:30 am to 4:00 pm, Eastern Time.

If attempts to reach the Examiner by telephone are unsuccessful, her supervisor, Harold Pyon, can be reached at 703/308-4251. The general fax number for the art unit is 703/872-9306. The receptionist answers 703/308-0661.



S. M. Nolan
Patent Examiner
Technology Center 1700

SMN/smn
09939072(7)
14 October 2003